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Norma Grace CONSTANTINEAU,
Plaintiff,

v.

James W. GRAGER, Chief of Police, Hart-
ford, Wisconsin, and State of
Wisconsin, Defendants.

No. 69-C-29

United States District Court
E. D. Wisconsin.
Aug. 18, 1969.

* * *

OPINION AND ORDER

Before DUFFY, Circuit Judge, and REYNOLDS and
GORDON, District Judges.

REYNOLDS, District Judge.

The complaint herein, brought pursuant to § 1983 of Title 42 and § 2281 of Title 28 of the United States Code of Laws, challenges the constitutionality of §§ 176.26 and 176.28(1) of the Wisconsin Statutes. The basis of the alleged invalidity is the claim that these State statutes have and are depriving the plaintiff of due process of law in violation of the fourteenth amendment to the United States Constitution.

The first cause of action seeks damages, and the second seeks injunctive relief. At a pretrial conference held on March 25, 1969, it was agreed that the two causes of action would be separated, and the second cause of action would be decided first. Following an oral motion on behalf of the defendants for judgment on the pleadings in respect to the second cause

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of action, it was further agreed that the sole issue for determination of the defendant's motion is whether the Wisconsin Statutes in question are on their face constitutional. A hearing limited to this issue was held on June 6, 1969.

FACTS

For the purposes of this motion, the facts as alleged in the pleadings will be regarded as true. The plaintiff, Norma Grace Constantineau, is an adult resident of the City of Hartford, Wisconsin. The defendant, James W. Grager, is the Chief of Police of the City of Hartford, Wisconsin.

On January 23, 1969, defendant Grager, in his capacity as Chief of Police and acting pursuant to §§ 176.26 and 176.28(1) of the Wisconsin Statutes, posted a notice in the retail liquor outlets in the City of Hartford, Wisconsin. This notice informed the person or establishment notified that they were forbidden "to sell or to give away to Norma Grace Constantineau any intoxicating liquors of whatever kind for a period of one year from date, under pain of the penalties provided by Sections 176.26 and 176.28(1) of the Wisconsin Statutes." This notice was signed by the defendant, James W. Grager, as Chief of Police on January 23, 1969.

It is uncontested that the plaintiff received no notice or hearing whatsoever prior to this posting, and that as a result of this posting she has been unable to purchase intoxicating liquors within the City of Hartford, Wisconsin.

STATUTES INVOLVED

The statutes pursuant to which the defendant Grager acted provide as follows:

"176.26 Liquor; beer and ale; sale forbidden; to whom. (1) When any person shall by excessive drinking of intoxicating liquors, or fermented malt beverages

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mispend, waste or lessen his estate so as to expose himself or family to want, or the town, city, village or county to which he belongs to liability for the support of himself or family, or so as thereby to injure his health, endanger the loss thereof, or to endanger the personal safety and comfort of his family or any member thereof, or the safety of any other person, or the security of the property of any other person, or when any person shall, on account of the use of intoxicating liquors or fermented malt beverages, become dangerous to the peace of any community, the wife of such person, the supervisors of such town, the mayor, chief of police or aldermen of such city, the trustees of such village, the county superintendent of the poor of such county, the chairman of the county board of supervisors of such county, the district attorney of such county or any of them, may, in writing signed by her, him or them, forbid all persons knowingly to sell or give away to such person any intoxicating liquors or fermented malt beverages, for the space of one year and in like manner may forbid the selling, furnishing, or giving away of any such liquors or fermented malt beverages, knowingly to such person by any person in any town, city or village to which such a person may resort for the same. A copy of said writing so signed shall be personally served upon the person so intended to be prohibited from obtaining any such liquor or beverage.

"(2) And the wife of such person, the supervisors of any town, the aldermen of any city, the trustees of any village, the county superintendent of the poor of such county, the mayor of any city, the chairman of the county board of supervisors of such county, the district attorney or sheriff of such county, may, by a notice made and signed as aforesaid, in like manner forbid all persons in such town, city or village, to sell or give away intoxicating liquors or drinks or fermented malt beverages to any person given to the excessive use of such liquors, drinks or beverages, specifying such person, and

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such notice shall have the same force and effect when such specified person is a nonresident as is herein provided when such specified person is a resident of said town, city or village."

"176.28 Sale to forbidden person; evidence; pleading. (1) When the sale or giving away of any intoxicating liquors or fermented malt beverages to any person shall have been forbidden in the manner provided by law, every person who shall sell or give to, or for, or purchase or procure for, or in behalf of, such prohibited person any such intoxicating liquors or fermented malt beverages, shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding \$250 and the costs of prosecution; and in default of immediate payment thereof he shall be committed to the county jail or house of correction not less than 60 days unless sooner discharged by the payment of such fine and costs."

ARE THE STATUTES ON THEIR FACE UNCONSTITUTIONAL?

The issue before this court is not whether a State may regulate the sale or gift of liquor to persons who by their excessive drinking mispend their funds so as to expose themselves or their families to want or their communities to liability for the support of themselves or their families or endanger their own health or the peace and welfare of their communities. The power of a State to regulate the purchase, sale, or gift of intoxicating liquors within its borders is well established. Because of the well-recognized noxious qualities of such liquors and the potential extraordinary evil which may result from their misuse, this police power has been held to encompass absolute prohibition as well as severe restriction. *Ziffrin, Inc. v. Reeves*, 308 U.S. 132, 60 S.Ct. 163, 84 L.Ed. 128 (1939); *Crane v. Campbell*, 245 U.S. 304, 38 S.Ct. 98, 62 L.Ed. 304 (1917). Rather the issue raised by this cause

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of action of the complaint is whether these particular statutes, enacted for an admittedly legitimate State objective, are nonetheless unconstitutional because in reaching that objective they violate the constitutional rights of individuals who are "posted."

It is the opinion of this court that §§ 176.26 and 176.28 (1) of the Wisconsin Statutes are on their face unconstitutional in that they violate the procedural due process requirements of the fourteenth amendment to the United States Constitution. The concept of procedural due process is an elusive concept, the exact meaning of which varies with the particular factual context. As stated in *Cafeteria & Restaurant Workers Union, Local 473, AFL-CIO v. McElroy*, 367 U.S. 886, 895, 81 S.Ct. 1743, 1748, 6 L.Ed. 2d 1230 (1961)-

*** consideration of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function involved as well as of the private interest that has been affected by governmental action.
* * *

In the instant case, the private interest affected by the statutes is not only the ability of the plaintiff to purchase alcoholic beverages within the City of Hartford, but also the interest of the plaintiff in not being exposed to unfounded public defamation, embarrassment, and ridicule. On the other hand, the governmental interest involved is the function of the State in regulating the sale of alcoholic beverages so as to prevent the dangers to individuals and the public that stem from their excessive use.

It is the defendant's position that having delineated the relative interests involved, procedural due process in the given situation does not require notice and hearing prior to "posting." They contend that when one weighs the police

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power of the State to control intoxicating liquors with the interest of the plaintiff in this case, the balance is clearly struck in favor of the former. With this conclusion we cannot agree.

In "posting" an individual, the particular city official or spouse is doing more than denying him the ability to purchase alcoholic beverages within the city limits. In essence, he is giving notice to the public that he has found the particular individual's behavior to fall within one of the categories enumerated in the statutes. It would be naive not to recognize that such "posting" or characterization of an individual will expose him to public embarrassment and ridicule, and it is our opinion that procedural due process requires that before one acting pursuant to State statute can make such a quasi-judicial determination, the individual involved must be given notice of the intent to post and an opportunity to present his side of the matter.

[1] At the very minimum, due process requires that a person about to be "posted" be given an opportunity to answer the allegation that his behavior brings him within one of the categories set forth in the statutes. The statutes, however, include no provision whatsoever for either notice or hearing prior to "posting," and for this reason it is our opinion that they are unconstitutional on their face.

[2] In ruling that a person about to be "posted" is entitled to an opportunity to be heard, we do not mean that he is entitled to a full hearing with all of the constitutional ramifications thereof. Such a person is entitled, however, to an opportunity to confront the person claiming that his conduct warrants his being "posted" and to present his side of the story before he is in fact "posted."

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The statutes involved also present serious constitutional questions with regard to the scope of persons to whom the "posting" is delegated as well as the definitiveness of the grounds for which an individual can be posted. However, having found that the statutes are unconstitutional as violative of due process, we do not find it necessary to reach these additional issues.

For the foregoing reason, it is the opinion of this Court that §§ 176.26 and 176.28(1) of the Wisconsin Statutes are on their face unconstitutional.

DUFFY, Senior Circuit Judge (dissenting).

I respectfully dissent. I believe my colleagues have failed to give effect to the well-established law that the states of our country possess a very high degree of police power in all matters pertaining to the regulation of intoxicating liquors.

"The power of a state to absolutely prohibit the sale of intoxicating liquor includes the power to permit the sale thereof under definitely prescribed conditions, and such business or traffic may be permitted only under such conditions as will limit to the utmost its evils. Similarly, the power to prohibit absolutely the manufacture of intoxicating liquors includes the power to prohibit conditionally, or to impose reasonable regulations or conditions upon, such manufacture." 30 Am.Jur., Intoxicating Liquors, §§ 23, p. 541.

Over fifty years ago the United States Supreme Court recognized that " * * * the right to hold intoxicating liquors for personal use is not one of those fundamental privileges of a citizen of the United States which no state may abridge." *Crane v. Campbell*, 245 U.S. 304, 308, 38 S.Ct. 98, 99, 62 L. Ed. 304 (1917). This statement was specifically approved in

Samuels v. McCurdy, 267 U.S. 188, 45 S.Ct. 264, 69 L.Ed. 568, in an opinion written by Chief Justice Taft.

In *Cafeteria & Restaurant Workers Union, Local 473, AFL-CIO v. McElroy*, 367 U.S. 886, 895, 81 S.Ct. 1743, 1748, 6 L.Ed.2d 1230, the Supreme Court stated: "As these and other cases make clear, consideration of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function involved as well as of the private interest that has been affected by governmental action."

We should here weigh the nature of the government's functions and powers against the affected right of the individual. We note that plaintiff's attorney, both in his brief and on oral argument, conceded that the right of his client to drink intoxicating liquors is not a right protected by the United States Constitution. In *Rice v. Sioux City Memorial Park Cemetery*, 349 U.S. 70, 72, 75 S.Ct. 614, 615, 99 L.Ed. 897, the Court said: "Only if a State deprives any person or denies him enforcement of a right guaranteed by the Fourteenth Amendment, can its protection be invoked."

The great police power of the states over intoxicating liquor already existing was increased by the passage of the Twenty-first Amendment to the United States Constitution. That amendment provides in substance: "The transportation or importation into any State [or] Territory * * * for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited." It is thus clear that the Twenty-first Amendment to the federal Constitution bestows on the states broad regulatory power over the liquor traffic. In 48 C.J.S. *Intoxicating Liquors* § 33, p. 167, it is stated: "The

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Twenty-First Amendment to the federal Constitution bestows on the states broad regulatory power over the liquor traffic."

In *Crowley v. Christensen*, 137 U.S. 86, 90-91, 11 S.Ct. 13, 15, 34 L.Ed. 620, the Court stated: "Not only may a license be exacted from the keeper of the saloon * * * but restrictions may be imposed as to the class of persons to whom they may be sold * * *."

In *Cafeteria & Restaurant Workers Union, Local 473, AFL-CIO v. McElroy*, *supra*, plaintiff Rachel Brawner was a shortorder cook in a cafeteria operated by her employer on a military base supervised by the defendant Secretary of Defense. She had worked there for six years. Her employer was satisfied with her work. The defendant withdrew her right to enter on the military base which was, of course, a condition necessary for her employment. Plaintiff challenged defendant's action saying that due process required that she be given notice of a hearing before any such action could be taken. The Supreme Court held that defendant's *ex parte* actions met the requirement of due process despite the absence of any notice to the plaintiff or a hearing.

In the *Cafeteria & Restaurant Workers'* case, *supra*, the Court noted that the plaintiff was free to obtain employment as a shortorder cook with the same employer at another location, saying: "All that was denied her was the opportunity to work at one isolated and specific military installation." 367 U.S. 896, 81 S. Ct. 1749.

Here, it can be stated that while bartenders in Hartford were prohibited from selling intoxicating liquors to the plaintiff, such prohibition was restricted to the city of Hartford and for a period of one year.

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In *Parker v. Board of Education of Prince George's County, Md.*, D.C., 237 F.Supp. 222 at 228, the Court noted that the plaintiff was denied the right to work in the public schools in one county in Maryland. In *Chafin v. Pratt*, 5 Cir., 358 F.2d 349, 357, the Court noted that plaintiff "was free to work elsewhere."

There is here no claim by plaintiff that the statement prepared by the defendant pursuant to Wisconsin Statutes § 176.26 and § 176.28 was untrue or unwarranted. There was no effort by the plaintiff to obtain a hearing before the defendant or anyone else.

In view of the unreversed decisions of the United States Supreme Court, I conclude that the requirements of due process are met by Sections 176.26 and 176.28(1) of the Wisconsin Statutes. If the Supreme Court's decisions are to be disregarded or modified, I think that is the prerogative of the Supreme Court and that it is not the prerogative of a United States District Court.

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ORDER

(Formal Parts Omitted)

This matter having come before the three-judge district court, hereinbefore convened, for a hearing on the second cause of action alleged in the complaint which challenges the constitutionality of §§ 176.26 and 176.28(1) of the Wisconsin Statutes, and the Court having heard counsel and being fully advised in the premises, and a majority of said court being of the opinion that §§ 176.26 and 176.28(1) of the Wisconsin Statutes are unconstitutional on their face,

IT IS NOW THEREFORE ORDERED that the defendants herein be and they are enjoined from enforcing the provisions of §§ 176.26 and 176.28(1) of the Wisconsin Statutes.

Dated at Milwaukee, Wisconsin, this 25th day of November, 1969.

/s/ JOHN W. REYNOLDS
U. S. District Judge

Wisconsin Statutes

176.26 Liquor; beer and ale; sale forbidden; to whom. (1) When any person shall by excessive drinking of intoxicating liquors, or fermented malt beverages misspend, waste or lessen his estate so as to expose himself or family to want, or the town, city, village or county to which he belongs to liability for the support of himself or family, or so as thereby to injure his health, endanger the loss thereof, or to endanger the personal safety and comfort of his family or any member thereof, or the safety of any other person, or the security of the property of any other person, or when any person shall, on account of the use of intoxicating liquors or fermented malt beverages, become dangerous to the peace of any community, the wife of such person, the supervisors of such town, the mayor, chief of police or aldermen of such city, the trustees of such village, the county superintendent of the poor of such county, the chairman of the county board of supervisors of such county, the district attorney of such county or any of them, may, in writing signed by her, him or them, forbid all persons knowingly to sell or give away to such person any intoxicating liquors or fermented malt beverages, for the space of one year and in like manner may forbid the selling, furnishing, or giving away of any such liquors or fermented malt beverages, knowingly to such person by any person in any town, city or village to which such person may resort for the same. A copy of said writing so signed shall be personally served upon the person so intended to be prohibited from obtaining any such liquor or beverage.

"(2) And the wife of such person, the supervisors of any town, the aldermen of any city, the trustees of any village, the county superintendent of the poor of such county, the mayor of any city, the chairman of the county board of supervisors of such county, the district attorney or sheriff of such county, may, by a notice made and signed as aforesaid, in like manner forbid all persons in such town, city or village, to sell or give away intoxicating liquors or drinks or fermented malt bever-

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ages to any person given to the excessive use of such liquors, drinks or beverages, specifying such person, and such notice shall have the same force and effect when such specified person is a nonresident as is herein provided when such specified person is a resident of said town, city or village."

"176.28 Sale to forbidden person; evidence; pleading. (1) When the sale or giving away of any intoxicating liquors or fermented malt beverages to any person shall have been forbidden in the manner provided by law, every person who shall sell or give to, or for, or purchase or procure for, or in behalf of, such prohibited person any such intoxicating liquors or fermented malt beverages, shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding \$250 and the costs of prosecution; and in default of immediate payment thereof he shall be committed to the county jail or house of correction not less than 60 days unless sooner discharged by the payment of such fine and costs."

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AFFIDAVIT

STATE OF WISCONSIN)

) ss

DANE COUNTY)

I, Benjamin Southwick, being on oath and duly sworn do certify that:

(1) I am an Assistant Attorney General in the State of Wisconsin Department of Justice and that I represent defendant State of Wisconsin in Norma Grace Constantineau v. James W. Grager, Chief of Police, Hartford, Wisconsin, and State of Wisconsin, United States District Court, Eastern District of Wisconsin, Case No. 69-C-29 and that I wrote a Brief in Support of Defendants' Motion for Summary Judgment and, In The Alternative, For Judgment On The Merits and that I argued on behalf of defendant State of Wisconsin at the hearing on June 6, 1969 on defendants' motion for judgment on the pleadings on which motion it had been stipulated that the sole issue for the motion was the constitutionality of secs. 176.26 and 176.28 of the Wisconsin Statutes.

(2) That in order to provide an example of the operation of the Wisconsin Statutes in question, namely, secs. 176.26 and 176.28 (1), that I intended to call two witnesses in conjunction with the presentation of defendants' case at said hearing held on June 6, 1969.

(3) That in preparation for said hearing I caused a subpoena and the appropriate mileage fees, as required by Title 28, sec. 1821 U.S.C., as amended, to be served upon the plaintiff Norma Grace Constantineau, and that the attached Exhibits A, B and C reflect the summons served, the certified check, and the proof of service which was served upon said plaintiff.

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(4) That the plaintiff Norma Grace Constantineau, and the defendant James W. Grager, Chief of Police, City of Hartford, Wisconsin, were present at said June 6, 1969 hearing.

(5) That it was my intention to ask questions of Norma Grace Constantineau and to elicit testimony from her concerning her place of residence, her reputation in the City of Hartford, Wisconsin, her habits in relation to the consumption of alcoholic beverages, any public defamation, embarrassment and ridicule which she may or may not have suffered as a result of the actions of the defendant James W. Grager taken pursuant to secs. 176.26 and 176.28 (1) of the Wisconsin Statutes, and other matters concerning said case.

(6) That it was my intention to ask questions of James W. Grager, and to elicit testimony from him as to the basis for his actions under said sections of the Wisconsin Statutes in relation to the plaintiff Norma Grace Constantineau and as to his actions pursuant to said statutory sections in relation to said plaintiff.

(7) That I requested permission of the three-judge panel consisting of United States Circuit Judge F. Ryan Duffy, and United States District Judges Myron L. Gordon and John W. Reynolds, constituting the said three-judge panel pursuant to Title 28, sec. 2281, U.S.C., to call said witnesses and to elicit testimony from them.

(8) That the said court denied my request to call witnesses and that I was not allowed to call said witnesses.

Dated at Madison, Wisconsin, this 5 day of January 1970.

/s/ Benjamin Southwick
BENJAMIN SOUTHWICK
Assistant Attorney General

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Subscribed and sworn to
before me this 5th day
of January 1970.

/s/ John C. Murphy

Notary Public, Dane County, Wisconsin

My commission: *is permanent*

EXHIBITS A, B, & C, mentioned hereinabove are omitted.

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Connecticut

General Statutes, Title 30, sec. 30-83:

"30-83. Selectmen to give permittees lists of drinkers receiving town aid. The selectmen of every town shall, annually or oftener, at their discretion, prepare a list of persons known to use alcoholic liquor to whom town aid for support has been furnished within the six months last past, and lodge a copy of such list with each person holding a permit to sell such alcoholic liquor in such town, forbidding the gift, sale or delivery of such liquor to any person whose name appears on such list, or to any member of his legal family except upon a physician's prescription endorsed by a member of the board of selectmen in such town. Every permittee who, by himself, his servant or agent, sells, gives, exchanges or delivers alcoholic liquor to the persons described in this section after receiving such notice from such selectmen shall be subject to the penalties of section 30-113."

General Statutes, Title 30, sec. 30-84:

"30-84. Sales to relatives. Whenever any person complains to any of the selectmen of any town or to any prosecuting officer that his or her father, mother, husband, wife, child, brother, sister or ward is addicted to the excessive use of alcoholic liquor and requests such selectmen or prosecuting officer, in writing, to notify the permittees in such town not to sell, exchange or give any such liquors to such father, mother, husband, wife, child, brother, sister or ward, such selectmen or such prosecuting officer shall, on being satisfied that such complaint is true, forthwith notify in writing every permittee in such town that such request has been made and that the sale, exchange or gift of any such liquor to such father, mother, husband, wife, child, brother, sister or ward is forbidden by law, giving the name and address of such person to whom the sale, exchange or gift of such liquor is forbidden, and such selectmen or

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prosecuting officer shall keep a record of such notification, which may be used as evidence. Such notification shall remain in force so long as such permittees continue to be permitted to sell alcoholic liquor, but the selectmen or prosecuting officer may revoke such notification at any time after one year from the date of its service."

General Statutes, Title 30, sec. 30-85:

"30-85. Liquors not to be sent to certain persons or their abodes. Every person who, except upon the written order of a practicing physician, carries or conveys to any person or to his abode any alcoholic liquor, the sale or gift of which to such person has been forbidden by section 30-83 or 30-84, or who delivers to any person any such liquor for the use of any person to whom such sale or gift has been forbidden by either of said sections, shall be subject to the penalties of section 30-113."

General Statutes, Title 30, Sec. 30-86:

"Sec. 30.86. Sales to minors, intoxicated persons and drunkards. Any permittee who, by himself, his servant or agent, sells or delivers alcoholic liquor . . . to any habitual drunkard, knowing him to be such an habitual drunkard, or to any person after having received notice from the selectmen, as provided in section 30-83 or 30-84, not to sell or give such liquor to such person, . . . except on the order of a practicing physician, shall be subject to the penalties of section 30-113."

Delaware

Del. Code, Title 4, sec. 715 (a) (6) (b):

"715. Prohibition of sales to certain persons.

"(a) No person shall sell any alcoholic liquor to any-

"(6) Individual who habitually drinks alcoholic liquor to excess, or to whom the Commission has, after

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investigation, decided to prohibit the sale of such liquor because of an appeal to the Commission by the husband, wife, father, mother, brother, sister, employer or other person depending upon, employing or in charge of such individual, or by the mayor or other competent representative of any city, town, or other incorporated place; the interdiction in such case shall last until removed by the Commission.

"(b) No sale made to any person mentioned in this section, other than an individual who has not reached the age of 21 years, shall constitute a misdemeanor unless the Commission has informed the seller, by registered letter, that it is forbidden to sell to such person or unless the fact is otherwise known to the seller."

Florida

Florida Stats., Title 32, sec. 562.50:

562.50 Habitual drunkards; furnishing intoxicants to, after notice

Any person who shall sell, give away, dispose of, exchange or barter any malt, spirituous or vinous liquors, including beer, ale and wine, or any ardent or other intoxicating liquor of any kind whatsoever, or any essence, extract, bitters, preparation, compound, composition or any article whatsoever under any name, label or brand, which produces intoxication, to any person habitually addicted to the use of any or all such intoxicating liquors, after having been given written notice by wife, husband, father, mother, sister, brother, child or nearest relative that said person so addicted is an habitual drunkard and that the use of intoxicating drink or drinks is working an injury to the person using said liquors, or to the person giving said written notice, shall, upon conviction thereof, be sentenced to a term of imprisonment for not more than six months, or by fine of not more than five hundred dollars, or both, for each and every such offense."

Georgia

Code of Georgia, Title 58, sec. 611:

"611. Furnishing liquor to habitual drunkard.—Any person who shall furnish any spirituous, malt, or intoxicating liquors in any quantity to an habitual drunkard personally known to him, of whose intemperate habits such person has been notified in writing, protesting against the selling or furnishing such intoxicating liquors, by the wife, father, mother, brother, or sister of such drunkard, shall be guilty of a misdemeanor."

Code of Georgia, Title 58, sec. 1061:

"1061. Sales to minors, habitual drunkards prohibited.—Any person who by himself or another shall furnish or cause to be furnished spirituous liquors, or beverages to any minor, to any person who is noticeably intoxicated, or to any habitual drunkard whose intemperate habits are known to such person, shall be guilty of a misdemeanor, and, upon conviction, shall be punished as for a misdemeanor."

Maryland

Code of Maryland, Art. 2B, sec. 119 (a):

"119. Sales to drunkards, etc.
(a) *Generally*.—No licensee

under the provisions of this article, or any of his employees, shall knowingly sell, barter, furnish, or give to a habitual drunkard, or give any intoxicating beverages to a mentally deficient person, or to any person whose husband, wife, son, daughter, or parent or parents, guardian, have given notice in writing, that such person is of unsound mind, or on account

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of his or her physical condition and request said licensee in writing, not to sell, barter, furnish or give any intoxicating beverages to him or her; and the word 'knowingly,' as to habitual drunkards should be construed to mean such knowledge as a reasonable man would have under ordinary circumstances, from the habits, appearances or personal reputation of such individual. Any person violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not exceeding \$50.00 for the first offense and for each succeeding offense shall be fined not exceeding \$100.00 or imprisoned in the county jail for not more than thirty days, or be both fined and imprisoned in the discretion of the court."

Minnesota

Minnesota Statutes, sec. 340.78:

"340.78 Sales to minors and others, after notice

"Every person selling liquor to a . . . habitual drunkard, or person under guardianship, after written notice by a parent, husband, wife, child, guardian, master, or employer of such . . . habitual drunkenness, or guardianship, or in the case of an habitual drunkard after written notice by the mayor, chief of police, or any member of the council of the municipality in which such habitual drunkard resides, or member of the county board of the county in which such habitual drunkard resides, and within one year after such notice in case of an habitual drunkard, and in other cases during the continuance of the minority, or guardianship, shall be punished by a fine of not less than \$50, nor more than \$100 or imprisonment in the county jail for not less than 30 nor more than 90 days."

Minnesota Statutes, sec. 340.73:

"340.73 Persons to whom sales are illegal

"* * *

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"Subd. 2. It shall be unlawful for any person except a licensed pharmacist to sell, give, barter, furnish or dispose of, in any manner, either directly or indirectly, any spirituous, vinous, malt or fermented liquors in any quantity, for any purpose, whatever, to any spendthrift, habitual drunkard, or improvident person, within one year after written notice by any peace officer, parent, guardian, master, employer, relative, or by any person annoyed or injured by the intoxication of such spendthrift, habitual drunkard, or improvident person, forbidding the sale of liquor to any such spendthrift, habitual drunkard, or improvident person.

Subd. 3. Whoever shall in any way procure liquor for the use of any person named in this section shall be deemed to have sold it to such person. Any person violating any of the provisions of this section is guilty of a gross misdemeanor. As amended Laws 1947, c. 87, § 1."

Minnesota Statutes, sec. 340.81:

"340.81 Exclusion of minors from places where liquor is sold after notice; penalty

"No . . . intemperate drinker, habitual drunkard, inmate of a poor or alms house, or person under guardianship, shall be allowed in any room where intoxicating liquor is sold in less quantities than five gallons as a beverage, after written notice upon the licensee or his agent, by parent, husband, wife, child, guardian, master or employer of such . . . intemperate drinking, habitual drunkenness or guardianship, or in the case of an intemperate drinker, inmate of a poor or alms house, or habitual drunkard, after written notice by the mayor, chief of police, judge of the municipal court, or any member of the council of the municipality in which such intemperate drinker, or habitual drunkard, resides, or member of the county board of the county in which such inmate of a poor or alms house, intemperate drinker or habitual drunkard resides, and within one year after such notice, in case of an inmate of a poor or alms house,

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intemperate drinker or habitual drunkard, and in other cases during the continuance of the minority or guardianship. Any violation of this section shall be punished by a fine of not less than \$25 nor more than \$100 or by imprisonment in the county jail for not less than 30 nor more than 90 days."

Nevada

Revised Statutes, sec. 202.100:

"202.100 Sale of intoxicating liquor to drunkards; penalty for drunkenness.

"1. It shall be unlawful for the proprietor, bartender or person in charge of any saloon or bar to sell or give, or to permit to be sold or given, any intoxicating liquor to any person who is drunk, or to any person known by such proprietor, bartender or person in charge to be an habitual drunkard or dipsomaniac, or to any habitual drunkard or dipsomaniac, after being notified by the wife, father or mother, son or daughter of such habitual drunkard or dipsomaniac, or by any peace officer, not to sell or give liquor to such habitual drunkard or dipsomaniac. The proprietor, bartender or person in charge of any saloon or bar may post behind the bar, where the same may be readily seen by the bartender, but may not be seen by the persons in front of the bar, a list of names of habitual drunkards, or persons to whom intoxicating liquors are not to be sold.

"2. It shall be unlawful for any habitual drunkard, dipsomaniac or drunken person, after being refused intoxicating liquor, to demand again the same on the same day from the person refusing to sell or to give him intoxicating liquors.

"3. It shall be unlawful for any person to sell any intoxicating liquor to any husband or father whose wife, or minor child or children, are in destitute circumstances and who are not supplied with the common necessities of life by such husband or father, after notice from the wife or minor child of such husband or father, or from

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any peace officer, not to sell any intoxicating liquor to such husband or father, and that such husband or father fails to provide his wife or minor child with the common necessities of life.

"4. Any person violating any provision of this section, or who, as a result of the use of intoxicating liquors, shall abuse or fail properly to support or care for his wife or any minor child lawfully in his custody, shall be guilty of a misdemeanor."

New Hampshire

Revised Statutes, sec. 175.6:

"175.6 Prohibited Sales. No licensee, sales agent, nor any other person, shall sell or give away or cause or permit or procure to be sold, delivered or given away any liquor or beverage to . . . an habitual drunkard, . . . or to any other person to whom any court, selectman of a town, chief of police, overseer of public welfare or the commission shall prohibit sale...."

New Jersey

Statutes, sec. 33:1-39:

"33:1-39. Rules and regulations by commissioner; subjects covered

"The commissioner may make such general rules and regulations and such special rulings and findings as may be necessary for the proper regulation and control of the manufacture, sale and distribution of alcoholic beverages and the enforcement of this chapter, in addition thereto, and not inconsistent therewith, and may alter, amend, repeal and publish the same from time to time.

"Such rules and regulations may cover the following subjects: . . . sales to defectives and habitual drunkards; out-of-door sales; limitation of sales, limitation of the quantity to be sold to a consumer for off-premises consumption, . . . practices unduly designed to increase

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consumption of alcoholic beverages; . . . and such other matters whatsoever as are or may become necessary in the fair, impartial, stringent and comprehensive administration of this chapter."

North Carolina

General Statutes, sec. 18-45:

"18-45. Powers and duties of county boards.—The said county boards shall each have the following powers and duties:

- "(1) Control and jurisdiction over the importation, sale and distribution of alcoholic beverages within its respective county.
- "(2) Power to buy and to have in its possession and to sell alcoholic beverages within its county.
- "(3) Power and authority to adopt rules and regulations governing the operation of stores within its county and relating to the carrying out of the provisions and purposes of this article.

* * *

- "(12) To require liquor stores to sell alcoholic beverages at the prices fixed by the State Board of Alcoholic Control, and to prescribe to whom the same may be sold."

General Statutes, sec. 18-46:

"18-46. No sales except during hours fixed by county boards; sales to minors, habitual drunkards, etc.; discretion of managers and employees; list of persons convicted of drunkenness, etc.; unlawful to buy for person prohibited.—No alcoholic beverage shall be sold knowingly by any county store or the manager thereof or any employee therein at any time other than within the opening and closing hours for said store, as fixed in the manner herein provided, and otherwise as prescribed by the said county board. No alcoholic

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beverage shall be sold knowingly to . . . any person known to be an habitual drunkard or who has within one year been confined in the inebriate ward of any State institution. The manager and employees of and in any county store may, in their discretion, refuse to sell alcoholic beverage to any individual applicant, and such power and the duty to exercise the same shall vest in and apply to such manager and employees, regardless of the failure of the county boards to make any regulations providing for the same, and in their discretion may refuse to sell more than four quarts at any one time in any one day to any person.

"The various clerks of the superior court and of any inferior courts in counties coming under the provisions of this article shall furnish to the chairman of the control board of their county a list of all persons convicted of public drunkenness or convicted of driving an automobile while intoxicated; and the State Motor Vehicle Department shall furnish to the chairmen of all the control boards in this State a list of all persons whose driving licenses have been revoked for driving an automobile while intoxicated, or for the illegal use of whiskey.

"It shall be unlawful for any person to buy any alcoholic beverage if he be within the class prohibited from purchasing same as set out in this section, and it shall further be unlawful for any person to buy any alcoholic beverage for any person who may be prohibited from purchasing for himself under any of the provisions of this article."

Ohio

General Code, sec. 6064-22:

"6064-22. [Restrictions on sales of beer and intoxicating liquor; age limit, hours, etc.] Sales of beer and intoxicating liquor under any and all classes of permits authorized by the liquor control act and from state

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liquor stores, shall be subject to the following restrictions, in addition to those lawfully imposed by the rules, regulations, or orders of the department, to-wit:

* * *

"3. No intoxicating liquor shall be sold to any individual who habitually drinks intoxicating liquor to excess, or to whom the department has, after investigation, determined to prohibit the sale of such intoxicating liquor, because of cause shown by the husband, wife, father, mother, brother, sister, or other person dependent upon, or in charge of such individual, or by the mayor of any municipal corporation, or a township trustee of any township in which the individual resides. The order of the department in such case shall remain in effect until revoked by the department."

Rhode Island

General Laws, sec. 3-11-2:

"3-11-2. Habitually intemperate persons—Notice by family or employer—Liability.—The husband, wife, parent, child, guardian or employer of any person who has or may hereafter have the habit of drinking intoxicating beverage to excess, may give notice in writing, signed by him or her, to any person requesting him not to sell or deliver intoxicating beverage to the person having such habit. If the person, so notified, at any time within twelve (12) months thereafter sells or delivers any intoxicating beverage to the person having such habit, or permits such person to loiter on his premises, the person giving the notice may in an action of trespass on the case recover of the person notified such sum as may be assessed as damages; provided, the employer giving said notice shall be injured in his person, business or property. A married woman may bring such action in her own name, and all damages recovered by her shall enure to her separate use. In case of the death of either party, the action and right of action shall survive to or against his executor or administrator."

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South Dakota

Compiled Laws, sec. 35-4-78:

"35-4-78. Persons to whom sale of liquor prohibited--Violation as misdemeanor--Second offense as felony--Penalties.--No licensee shall sell any intoxicating liquor:

* * *

- "(2) To any person who is . . . known to the seller to be an habitual drunkard;
- "(3) To any person to whom the seller has been requested in writing not to make such sale, where such request is by the commissioner of revenue, any police or peace officer, or the husband, wife, mother, father, brother, sister, or child of the person;
- "(4) To any spendthrift, mentally ill, or mentally retarded person;
- "(5) To any person who is known to be the object of charity, or is known to be supported by any charitable association or institution."

Vermont

Statutes, Title 7, sec. 505:

"505. Notice to prohibit sales to certain persons

"The father, mother, husband, wife, child, brother, sister, guardian or employer of a person or an overseer of the poor of a town with respect to persons supported in whole or in part by such town, may, in writing, notify any board of control commissioners as defined in section 2 of this title, who may, on investigation, forbid the sale or furnishing of spirituous liquor or malt and vinous beverages or both by licensees as defined in section 2 of this title, within the jurisdiction of such board of control commissioners to such person."

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Statutes, Title 7, sec. 506:

"506. Record of notices

"Such board of control commissioners shall place on file the notices received under section 505 of this title and they shall be open to public inspection at reasonable times, except that the notices of a husband, father, wife, child, mother or a sister provided for in section 505 of this title shall not be open to inspection nor be disclosed by such board of control commissioners. Upon receipt of a notice, such board of control commissioners may, upon investigation, give written notice forbidding the sale or furnishing of spirituous liquors or malt and vinous beverages or both to such person and to all licensees within the jurisdiction of such board of control commissioners.

"Copies of all notices sent by a board of control commissioners shall be furnished forthwith to the liquor administrator who may upon receipt of such copy forbid the sale of spirituous liquors by any state agency or agencies to such person."

Statutes, Title 7, sec. 507:

"507. Expiration of notices

"All notices given under section 506 of this title shall expire six months from their date unless sooner revoked."

Wyoming

Statutes, sec. 12-33:

"12-33. Minors, habitual drunkards and incompetents — Restrictions generally.—(a) Every holder of a license issued under the provisions of this act (sections 53-201 and [to] 53-236, Wyoming Compiled Statutes, 1945) or the servant or employee of such holder, who shall sell, give or deliver alcoholic or malt beverages to any habitual drunkard; and every person, firm or

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corporation or his agent or agents who shall sell alcoholic or malt beverages to any habitual drunkard or any incompetent person . . . shall be guilty of a misdemeanor."

Statutes, sec. 12-34:

"12-34. Same-Sale after notice to licensee or permittee.-Whenever any court, parent or guardian shall notify any licensee or permittee . . . that his or her spouse or person liable for the support of such dependent is an habitual drunkard and by reason of such habitual drunkenness [drunkenness] is neglecting to provide support for such spouse or dependent, by written notice, and the licensee or permittee so notified shall thereafter sell or give any alcoholic or malt liquor to such child, ward, or habitual drunkard, the person giving such notice may bring an action in the district court, against such licensee or permittee and upon proof of acts stated in the notice recover in such action the actual damages sustained, punitive damages of not less than one hundred dollars (\$100.00) and costs."